

ORIGINAL

NEW APPLICATION



0000123778

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS Arizona Corporation Commission
GARY PIERCE- CHAIRMAN
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

DOCKETED BY

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2011 MAR -9 P 3:41

AZ CORP COMMISSION
DOCKET CONTROL

MAR -9 2011

IN THE MATTER OF THE APPLICATION OF
LEVEL 3 COMMUNICATIONS, LLC FOR A
LIMITED WAIVER OF THE PUBLIC UTILITY
HOLDING COMPANIES AND AFFILIATED
INTEREST RULES (A.A.C.R-14-2-801 et seq.)

DOCKET NOS. T-03654A-11-

T-03654A-11-0106

**APPLICATION AND VERIFIED PETITION FOR A
LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES
AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 et seq.)**

Level 3 Communications, LLC ("Level 3 LLC" or "Applicant"), pursuant to A.A.C. R14-2-806 and any other regulations deemed applicable, requests a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules") to participate in a refinancing arrangement. In the alternative, Level 3 seeks approval under A.A.C. R14-2-804(B)(1) to provide the guarantee required to participate in the refinancing.¹

Level 3 Financing, Inc. ("Issuer"), Applicant's immediate holding company parent, intends to issue \$500 million in 9.375% Senior Notes due 2019 to qualified institutional buyers ("Buyers") in a private offering that is exempt from registration under U.S. Federal securities laws. The Issuer will lend the net proceeds it receives in the offering of the notes to its subsidiary, Level 3 LLC, in return for an intercompany demand note issued by Level 3 LLC to the Issuer. Level 3 LLC seeks approval from the Commission for this refinancing transaction and its related guarantee of the

¹ As discussed below, Level 3 is seeking authority only for a guarantee related to the refinancing. It will not be encumbering any Arizona assets as part of the refinancing.

1 notes issued by Issuer to Buyers. The Commission previously granted approval to Applicant for a
2 similar financing arrangement of \$640 million in Decision No. 71507 issued in Docket No. T-
3 03654A-10-0002 on March 2, 2010. As described below, the funds will be used to repurchase
4 previously issued notes that were issued at the rate of 10% and are due in 2018.

5 The financing arrangement replaces an existing financing arrangement, pursuant to
6 substantially similar terms and conditions coupled with a favorable interest rate and extended
7 maturity date to 2019. Expedited treatment is necessary to meet the demands of the limited and
8 time-sensitive market opportunity under which the Issuer, underwriters, and Buyers are all
9 operating. Timely closing of this arrangement will enable the Issuer to refinance \$500 million of
10 debt at very attractive economic terms. Applicant requests that the Commission grant its approval
11 of this transaction no later than 45 days from the date of this filing to allow Applicant to timely
12 consummate the proposed transaction and meet important business and financial objectives.

13 INTRODUCTION

14 Level 3 LLC holds a Certificate of Convenience and Necessity to provide competitive
15 telecommunications services in Arizona. Decision No. 61737 (June 4, 1999). Based on its
16 operational revenues, Level 3 LLC is considered a Class A utility and is, therefore, subject to the
17 Rules. The Rules regulate the formation of public utility holding companies and certain
18 transactions and activities between public service corporations and their affiliated interests.
19 According to the Commission, the Rules are intended to: (i) prevent the commingling of utility and
20 non-utility funds; (ii) prohibit cross-subsidization of non-utility activities by utility ratepayers; (iii)
21 prevent negative impact of non-utility activities on a utility's financial credit; and (iv) ensure that
22 the utility and its affiliates provide the Commission with the information necessary to "carry out its
23 regulatory responsibilities." See A.C.C. Decision No. 56618.

24 Applicant respectfully submits that, in light of the Rules' stated purposes, Applicant should
25 be exempt from the requirements of the Rules for the purposes of the financing arrangement
26 described herein. As explained below, Applicant operates in a highly competitive environment
27 that effectively protects customers from activities that will detrimentally affect service to

1 customers. As a result, a limited waiver of these Rules is in the public interest. Therefore,
2 Applicant requests a limited waiver of the Rules as they may apply to the financing arrangement
3 described below.

4 **DESCRIPTION OF PARTIES**

5 A. Level 3 Communications, Inc. ("Parent"), Level 3 Financing, Inc. ("Issuer"),
6 and Level 3 Communications, LLC.

7 Level 3 Financing, Inc., the issuer of the Notes, is a Delaware corporation wholly owned by
8 Level 3 Communications, Inc. ("Parent"), a publicly held Delaware corporation. Issuer is the
9 direct parent of Level 3 Communications, LLC and other subsidiaries. Neither Parent nor Issuer is
10 a certificated telecommunications service provider in Arizona or elsewhere. Level 3
11 Communications, LLC is a Delaware limited liability company and is a wholly owned subsidiary
12 of Issuer. All three companies have principal offices located at 1025 Eldorado Boulevard,
13 Broomfield, CO 80021.

14 Level 3 LLC provides high-quality voice and data services to carriers, ISPs, and other
15 business customers over its IP-based network. Level 3 LLC is a non-dominant carrier authorized
16 to provide resold and/or facilities-based telecommunications services nationwide pursuant to
17 certification, registration or tariff requirements, or on a deregulated basis. Level 3 LLC is also
18 authorized by the Federal Communications Commission to provide international and domestic
19 interstate services as a non-dominant carrier.

20 In Arizona, Level 3 is authorized to provide facilities-based and resold local exchange, toll
21 and access services pursuant to a certificate granted Decision No. 61737 issued by the Commission
22 in Docket No. T-03654A-98-0641 on June 4, 1999.

23 **CONTACT INFORMATION**

24
25 Inquiries or copies of any correspondence, orders, or other materials pertaining to this
26 Application should be directed to:
27

1 Michael W. Patten
2 Timothy J. Sabo
3 Roshka DeWulf & Patten
4 One Arizona Center
5 400 East Van Buren Street, Suite 800
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7 Tel: (602) 256-6100
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9 Email: mpatten@rdp-law.com

10 Catherine Wang
11 Danielle C. Burt
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13 2020 K Street, NW
14 Washington, DC 20006
15 Tel: (202) 373-6000
16 Fax: (202) 373-6001
17 Email: catherine.wang@bingham.com
18 Email: danielle.burt@bingham.com

19 and

20 Richard E. Thayer
21 Senior Counsel
22 Level 3 Communications, LLC
23 1025 Eldorado Boulevard
24 Broomfield, CO 80021
25 Tel: (720) 888-2620
26 Fax: (720) 888-5134
27 Email: rick.thayer@Level3.com

DESCRIPTION OF THE TRANSACTION

20 Applicant requests Commission approval to participate in a financing arrangement between
21 Issuer and Level 3 LLC whereby Level 3 LLC will incur indebtedness as described below and
22 provide a guarantee for a total aggregate amount of \$500 million in senior notes issued by Issuer to
23 Buyers. Level 3 Financing, as the issuer of the notes, will lend the net proceeds it receives along
24 with additional cash on hand to Level 3 LLC in return for an intercompany demand note issued by
25 Level 3 LLC in the amount of \$500 million. The funds will be used to purchase previously issued
26 notes that were issued at the rate of 10% and are due in 2018. In addition to providing a demand
27 note to Issuer, Level 3 LLC will provide a guarantee of the Issuer's 9.375% Senior Notes due

1 2019. Accordingly, Level 3 LLC seeks approval from the Commission for this indebtedness and
2 the guarantee of the notes issued by Level 3 Financing.

3 Applicant emphasizes that participation in the financing arrangement will not result in a
4 change in Level 3 LLC's management or in its day-to-day operations in Arizona; nor will it
5 adversely affect Level 3 LLC's operations in Arizona. The financing arrangement will enable
6 Level 3 LLC to bring services to new markets and allow more consumers to benefit from its
7 competitive services. Accordingly, and to the extent required, Applicant requests that the
8 Commission approve the participation of Level 3 LLC in the financial arrangement described
9 herein.

10 **BASIS FOR LIMITED WAIVER**

11 A. The Proposed Transaction Will Not Directly or Indirectly Result in or Cause an
12 Increase in Applicants' Maximum Rates on File with the Commission for Any
13 Competitive Service.

14 The Commission previously has granted partial waivers of the Rules. *See, e.g.,* Decision
15 No. 64737. In granting such waivers, the Commission determined that only when a transaction
16 "could directly or indirectly result in or cause an increase in its maximum rate on file with the
17 Commission for any competitive service" would a company have to make the necessary filings
18 under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. Applicant requests that the
19 Commission employ a consistent analysis to its request for a limited waiver of the Rules for
20 Applicant's participation in the financing arrangement.

21 Level 3 LLC primarily provides competitive wholesale services to other carriers, VoIP
22 providers, and Internet Service Providers. The market for such services is highly competitive and
23 prices are set by competition. With every product pricing change initiated by Level 3 LLC,
24 competitors inevitably introduce new services or re-price their service in a manner believed to be
25 even more attractive to the consumer. Accordingly, neither Level 3 LLC nor its subsidiaries have
26 incentive or ability to charge unduly high or above-market prices that could be used to fund or
27

1 subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is
2 harmful to Arizona consumers.

3 In addition, immediately following Applicant's participation in the financing arrangement,
4 Applicant will continue to offer the services they offer with no change in the rates or terms and
5 conditions of service. Applicant does not anticipate that the financing arrangement will cause it to
6 increase its maximum rates on file with the Commission for their competitive services.

7 B. Applicant's Participation in the Financing Arrangement is in the Public Interest.

8 Approval of the proposed financial arrangements described herein will serve the public
9 interest in promoting competition among telecommunications carriers by providing Level 3 LLC
10 with the opportunity to strengthen its competitive position through access to greater financial
11 resources on more favorable terms. Furthermore, by increasing the breadth and scope of
12 telecommunications services made available through an increased ability to expand Level 3 LLC's
13 operations, greater access to capital will also strengthen Level 3 LLC's ability to bring competitive
14 telecommunications services to consumers in the State of Arizona. This financing transaction will
15 be transparent to consumers and consumers will benefit from the continued receipt of quality
16 telecommunications services that are priced competitively.

17 C. Verification.

18 The verification required by A.A.C. R14-2-806(B) is attached as Exhibit A.

19 **ALTERNATIVE REQUEST FOR APPROVAL UNDER RULE 804.**

20 If the Commission does not grant the limited waiver requested above, Level 3 LLC
21 requests that the Commission authorize it to provide the guarantee under A.A.C. R14-2-804(B)(1).
22 That rule contemplates there will be situations where a certificated public service provider will
23 need to issue guarantees for a holding company. As set forth in more detail above, approval of this
24 application will enable Level 3, LLC and its affiliates access to debt capital at more favorable rates
25 and for an extended term, as compared to the current financing authorized by the Commission.
26 This will strengthen Level 3 LLC, and it will also serve to promote competition in Arizona's
27 telecommunications markets.

1 Moreover, Level 3 will not be encumbering any assets as part of the financing transaction.
2 Therefore, to the extent that Level 3 holds any customer deposits or prepayments, those funds will
3 not be pledged as part of the transaction.

4 **RELIEF REQUESTED**

5 Level 3 LLC respectfully requests the following:

6 1. Waiver of the requirement under A.A.C. R14-2-804(B) that Level 3 LLC obtain
7 Commission approval, to the extent necessary, prior to entering into the financing arrangement
8 described herein. In the alternative and pursuant to A.A.C. R14-2-804(B), Applicant requests
9 approval to guarantee the Senior Notes.

10 2. Waiver of any other applicable requirements of the Rules as they may apply to the
11 transaction described herein.

12 3. Any other approvals deemed necessary for the transaction described in this
13 Application.

14 **CONCLUSION**

15 For the foregoing reasons, Applicant respectfully requests that the Commission grant a
16 limited waiver as set forth above, or, in the alternative, approve Applicant's guarantee of the
17 Senior Notes. Applicant also requests that any condition that it file any of the transaction
18 documents be limited to a filing with Commission Staff and subject to an appropriate Protective
19 Agreement.

20 RESPECTFULLY SUBMITTED this 9th day of March 2011.

21 LEVEL 3 COMMUNICATIONS, LLC.

22
23
24 By _____



25 Michael W. Patten
26 Roshka DeWulf & Patten, PLC
27 One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

1 Original and 13 copies of the foregoing
2 filed this 9th day of March 2011 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed
8 this 9th day of March 2011 to:

9 Lyn A. Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Janice M. Alward, Esq.
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Steve Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

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27

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29

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35

36

37

By Mary Spolito

EXHIBIT

“A”

VERIFICATION

STATE OF COLORADO

§

§

COUNTY OF BROOMFIELD

§

I, Richard E. Thayer, state that I am Senior Counsel for Level 3 Communications, LLC;
that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its
subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that
the statements in the foregoing document are true and correct to the best of my knowledge,
information, and belief.



Name: Richard E. Thayer

Title: Senior Counsel

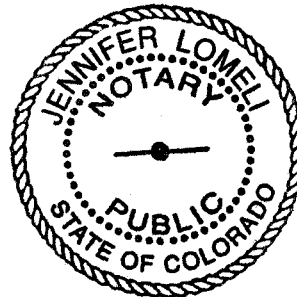
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 4th day of March, 2011.



Notary Public

My commission expires: 11/16/13



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T-03654A-11-0106

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AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 et seq.)**

Level 3 Communications, LLC ("Level 3 LLC" or "Applicant"), pursuant to A.A.C. R14-2-806 and any other regulations deemed applicable, requests a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules") to participate in a refinancing arrangement. In the alternative, Level 3 seeks approval under A.A.C. R14-2-804(B)(1) to provide the guarantee required to participate in the refinancing.¹

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8 Level 3 Communications, Inc. ("Parent"), a publicly held Delaware corporation. Issuer is the
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19 interstate services as a non-dominant carrier.

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22 in Docket No. T-03654A-98-0641 on June 4, 1999.

23 CONTACT INFORMATION

24
25 Inquiries or copies of any correspondence, orders, or other materials pertaining to this
26 Application should be directed to:
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1 Michael W. Patten
2 Timothy J. Sabo
3 Roshka DeWulf & Patten
4 One Arizona Center
5 400 East Van Buren Street, Suite 800
6 Phoenix, AZ 85004
7 Tel: (602) 256-6100
8 Fax: (602) 256-6800
9 Email: mpatten@rdp-law.com

10 Catherine Wang
11 Danielle C. Burt
12 Bingham McCutchen LLP
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14 Washington, DC 20006
15 Tel: (202) 373-6000
16 Fax: (202) 373-6001
17 Email: catherine.wang@bingham.com
18 Email: danielle.burt@bingham.com

19 and

20 Richard E. Thayer
21 Senior Counsel
22 Level 3 Communications, LLC
23 1025 Eldorado Boulevard
24 Broomfield, CO 80021
25 Tel: (720) 888-2620
26 Fax: (720) 888-5134
27 Email: rick.thayer@Level3.com

DESCRIPTION OF THE TRANSACTION

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21 Issuer and Level 3 LLC whereby Level 3 LLC will incur indebtedness as described below and
22 provide a guarantee for a total aggregate amount of \$500 million in senior notes issued by Issuer to
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27 note to Issuer, Level 3 LLC will provide a guarantee of the Issuer's 9.375% Senior Notes due

1 2019. Accordingly, Level 3 LLC seeks approval from the Commission for this indebtedness and
2 the guarantee of the notes issued by Level 3 Financing.

3 Applicant emphasizes that participation in the financing arrangement will not result in a
4 change in Level 3 LLC's management or in its day-to-day operations in Arizona; nor will it
5 adversely affect Level 3 LLC's operations in Arizona. The financing arrangement will enable
6 Level 3 LLC to bring services to new markets and allow more consumers to benefit from its
7 competitive services. Accordingly, and to the extent required, Applicant requests that the
8 Commission approve the participation of Level 3 LLC in the financial arrangement described
9 herein.

10 **BASIS FOR LIMITED WAIVER**

11 A. The Proposed Transaction Will Not Directly or Indirectly Result in or Cause an
12 Increase in Applicants' Maximum Rates on File with the Commission for Any
13 Competitive Service.

14 The Commission previously has granted partial waivers of the Rules. *See, e.g.,* Decision
15 No. 64737. In granting such waivers, the Commission determined that only when a transaction
16 "could directly or indirectly result in or cause an increase in its maximum rate on file with the
17 Commission for any competitive service" would a company have to make the necessary filings
18 under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. Applicant requests that the
19 Commission employ a consistent analysis to its request for a limited waiver of the Rules for
20 Applicant's participation in the financing arrangement.

21 Level 3 LLC primarily provides competitive wholesale services to other carriers, VoIP
22 providers, and Internet Service Providers. The market for such services is highly competitive and
23 prices are set by competition. With every product pricing change initiated by Level 3 LLC,
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25 even more attractive to the consumer. Accordingly, neither Level 3 LLC nor its subsidiaries have
26 incentive or ability to charge unduly high or above-market prices that could be used to fund or
27

1 subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is
2 harmful to Arizona consumers.

3 In addition, immediately following Applicant's participation in the financing arrangement,
4 Applicant will continue to offer the services they offer with no change in the rates or terms and
5 conditions of service. Applicant does not anticipate that the financing arrangement will cause it to
6 increase its maximum rates on file with the Commission for their competitive services.

7 B. Applicant's Participation in the Financing Arrangement is in the Public Interest.

8 Approval of the proposed financial arrangements described herein will serve the public
9 interest in promoting competition among telecommunications carriers by providing Level 3 LLC
10 with the opportunity to strengthen its competitive position through access to greater financial
11 resources on more favorable terms. Furthermore, by increasing the breadth and scope of
12 telecommunications services made available through an increased ability to expand Level 3 LLC's
13 operations, greater access to capital will also strengthen Level 3 LLC's ability to bring competitive
14 telecommunications services to consumers in the State of Arizona. This financing transaction will
15 be transparent to consumers and consumers will benefit from the continued receipt of quality
16 telecommunications services that are priced competitively.

17 C. Verification.

18 The verification required by A.A.C. R14-2-806(B) is attached as Exhibit A.

19 **ALTERNATIVE REQUEST FOR APPROVAL UNDER RULE 804.**

20 If the Commission does not grant the limited waiver requested above, Level 3 LLC
21 requests that the Commission authorize it to provide the guarantee under A.A.C. R14-2-804(B)(1).
22 That rule contemplates there will be situations where a certificated public service provider will
23 need to issue guarantees for a holding company. As set forth in more detail above, approval of this
24 application will enable Level 3, LLC and its affiliates access to debt capital at more favorable rates
25 and for an extended term, as compared to the current financing authorized by the Commission.
26 This will strengthen Level 3 LLC, and it will also serve to promote competition in Arizona's
27 telecommunications markets.

Moreover, Level 3 will not be encumbering any assets as part of the financing transaction. Therefore, to the extent that Level 3 holds any customer deposits or prepayments, those funds will not be pledged as part of the transaction.

RELIEF REQUESTED

Level 3 LLC respectfully requests the following:

1. Waiver of the requirement under A.A.C. R14-2-804(B) that Level 3 LLC obtain Commission approval, to the extent necessary, prior to entering into the financing arrangement described herein. In the alternative and pursuant to A.A.C. R14-2-804(B), Applicant requests approval to guarantee the Senior Notes.

2. Waiver of any other applicable requirements of the Rules as they may apply to the transaction described herein.

3. Any other approvals deemed necessary for the transaction described in this Application.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Commission grant a limited waiver as set forth above, or, in the alternative, approve Applicant's guarantee of the Senior Notes. Applicant also requests that any condition that it file any of the transaction documents be limited to a filing with Commission Staff and subject to an appropriate Protective Agreement.

RESPECTFULLY SUBMITTED this 9th day of March 2011.

LEVEL 3 COMMUNICATIONS, LLC.

By



Michael W. Patten
Roshka DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

1 Original and 13 copies of the foregoing
2 filed this 9th day of March 2011 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed
8 this 9th day of March 2011 to:

9 Lyn A. Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Janice M. Alward, Esq.
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Steve Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

25

26

27 By Mary Spolito

EXHIBIT

“A”

VERIFICATION

STATE OF COLORADO

§
§
§

COUNTY OF BROOMFIELD

I, Richard E. Thayer, state that I am Senior Counsel for Level 3 Communications, LLC;
that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its
subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that
the statements in the foregoing document are true and correct to the best of my knowledge,
information, and belief.




Name: Richard E. Thayer

Title: Senior Counsel

Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 4th day of March, 2011.


Notary Public

My commission expires: 11/16/13

